Stephen H. Galloway, OSB No. 093602
stephen.galloway@stoel.com
STOEL RIVES LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Telephone: 503.224.3380
Facsimile: 503.220.2480

Hal R. Morris, *pro hac vice* forthcoming
HRMorris@arnstein.com
ARNSTEIN & LEHR LLP
161 North Clark Street, Suite 4200
Chicago, Illinois 60601
Telephone: 312.876.7100
Facsimile: 312.876.0288

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

SOLARWORLD AMERICAS, INC.,	Case No.:3:17-cv-00905
Plaintiff,	**COMPLAINT**
v.	DEMAND FOR JURY TRIAL
PD SOLAR, INC., and PETERSEN-DEAN, INC.,	
Defendants.	

Plaintiff, SolarWorld Americas, Inc. ("**SWA**"), by its attorneys, Stephen H. Galloway of Stoel Rives LLP and Hal R. Morris of Arnstein & Lehr LLP (*pro hac vice* forthcoming), for its

Complaint against Defendants, PD Solar, Inc. ("**PDS**") and Petersen-Dean, Inc. ("**PD**"), states as follows.

PRELIMINARY STATEMENT

1. This is an action for damages to redress PDS' breach of contract, anticipatory repudiation, failure to pay the price of goods accepted and accounts stated, and to redress PD's breach of a written guaranty resulting from PDS and PD's (collectively "Defendants") failure to pay for goods provided by SWA. Alternatively, PDS is liable to SWA for the amount by which PDS was unjustly enriched in retaining the goods without payment.

2. As of May 22, 2017, Defendants have failed to pay overdue invoices in the amount of $2,727,038.19 (the "**Overdue Invoices**") and refuse to pay outstanding, but not yet overdue, invoices in the amount of $5,520,146.7 (the "**Outstanding Invoices**"), in direct violation of SWA's General Terms and Conditions of Sale (the "**General Conditions**"), the terms of the Overdue Invoices and Outstanding Invoices, and PD's Guaranty Agreement (the "**Guaranty**").

3. Plaintiff's claims for recovery are thus brought pursuant to (1) the Oregon Uniform Commercial Code's ("UCC") Seller's Remedies, including Action for a Price, ORS 72.7090, and all other Remedies available under ORS 72.7030, and (2) Oregon common law and statutory remedies for breach of contract, unjust enrichment, and account stated.

PARTIES

4. Plaintiff SWA is an Oregon corporation with its principal place of business located at 25300 NW Evergreen Road, Hillsboro, Oregon 97124.

5. SWA has been the largest U.S. solar photovoltaic manufacturer for more than 40 years. SWA designs and manufactures high-performance, superior quality solar panels available

in a variety of sizes and power, making them suitable for all applications. SWA has production facilities in Hillsboro, Oregon.

6. Defendant PD is a California corporation with its principal place of business located at 39300 Civic Center Drive, Suite 300, Fremont, California 94538.

7. PD is a home improvement contractor that specializes in solar and roofing installation. PD is the parent corporation to PDS.

8. Defendant PDS is a California corporation with its principal place of business located at 39300 Civic Center Drive, Suite 300, Fremont, California 94538.

9. PDS is a wholly owned subsidiary of PD that performs the engineering and construction services for PD though PDS' multiple locations throughout California.

10. Since early 2014, SWA and PDS have had an ongoing relationship for the sale and purchase of SWA's solar photovoltaic products and supplies for use in PDS' engineering and construction services.

11. Since the relationship between SWA and PDS began in 2014, PD has been the guarantor for PDS' performance and payment obligations to SWA.

JURISDICTION

12. This Court has jurisdiction over this matter based on diversity, pursuant to 28 U.S.C. § 1332(a), because (1) Defendants are citizens of California, their principal offices and nerve centers are located in California, and SWA is a citizen of Oregon, its principal office and nerve center is located in Oregon, and (2) the amount in controversy exceeds $75,000 (excluding interest and costs).

13. Venue is proper in this District because the General Conditions call for venue in Oregon and the General Conditions and the Guaranty require performance by all parties in Oregon.

FACTS COMMON TO ALL COUNTS

14. Since early 2014, SWA has sold, and PDS has purchased, SWA's solar photovoltaic products and supplies.

15. This relationship continued until PDS failed to pay Overdue Invoices and refused to pay Outstanding Invoices on or around April 24, 2017, in direct violation of the General Conditions, the terms of the invoices, and prevailing law.

16. PDS' Overdue Invoices include all unpaid invoices, dated January 24, 2017 to February 22, 2017, relating to products properly delivered by SWA and accepted by PDS for which payment has come due as of May 22, 2017.

17. The Overdue Invoices are in the amount of $2,727,038.19.

18. PDS' Outstanding Invoices include all other unpaid invoices, dated February 28, 2017 to May 8, 2017, relating to products properly delivered by SWA and accepted by PDS for which payment has not come due as of May 22, 2017.

19. The Outstanding Invoices are in the amount of $5,520,146.70.

20. Accordingly, for all PDS' Overdue Invoices and Outstanding Invoices collectively, SWA is owed approximately $8,247,184.89.

21. Every one of the Overdue Invoices and the Outstanding Invoices is governed by the General Conditions.

22. Section 17 of the General Conditions provides that:

> SWA's General Terms and Conditions of Sale shall constitute the entire agreement (the "Agreement") between the parties with respect to the sale

> of the Products and shall not be modified or rescinded except in writing signed by SWA and Customer. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements, and understandings of the parties with respect to the subject matter of this Agreement.

23. A copy of the General Conditions is attached to each Overdue Invoice and Outstanding Invoice, and is also available upon request from SWA.

24. From early 2014 until PDS' failure to pay in April 2017, SWA and PDS dealt with each other as agreed in the General Conditions with regard to the sale and purchase of SWA products.

25. Section 2(a) of the General Conditions requires PDS to initiate a product delivery by placing a purchase order (a "**PO**") with SWA, specifying the quantity and description of products requested, delivery dates and details, and other customer identification information.

26. Section 2(a) states that the POs are only binding when accepted by SWA in writing. With regard to the Overdue Invoices and the Outstanding Invoices, SWA confirmed all PDS POs by sending PDS an invoice for each PO, detailing the scope of supply, time of delivery, cost, terms of payment, and also including the General Conditions.

27. Pursuant to the General Conditions, if PDS does not object in writing to the General Conditions within 24 hours of receipt of the invoice, the terms of the General Conditions are deemed accepted.

28. PDS has never objected to the General Conditions following its receipt of any SWA invoice. Therefore, the General Conditions are deemed accepted as to every PDS invoice, including all Overdue Invoices and Outstanding Invoices.

29. Further, upon receipt of an invoice, PDS has 24 hours to make corrections or changes. Failure to do so is considered acceptance pursuant to Section 2(c).

30. PDS failed to make any corrections or changes to any of the Overdue Invoices and Outstanding Invoices within 24 hours, and did not otherwise cancel any of these invoices. Accordingly, PDS accepted all of the Overdue Invoices and Outstanding Invoices.

31. SWA delivered all products in conformity with the General Conditions and pursuant to the terms of each Overdue Invoice and Outstanding Invoice.

32. Section 6(a) of the General Conditions states that "[p]roducts shall be deemed accepted by Customer and conforming to contract requirements unless written notice of defect or shortage or overage is received within ten (10) days of receipt of product together with supporting evidence . . . ."

33. SWA maintains records regarding all products not accepted and/or returned to SWA, which reflect that none of the products sold pursuant to the Overdue Invoices or Outstanding Invoices were rejected or returned by PDS.

34. Accordingly, all SWA products sold pursuant to the Overdue Invoices and Outstanding Invoices have been accepted by PDS.

35. Pursuant to the General Conditions and established law, PDS is required to pay for all goods accepted.

36. Section 4(a) states that "[p]ayment shall be due at time of shipment unless otherwise specified in SWA's quotation or order confirmation. . . ."

37. Most, if not all, of SWA's invoices include "Terms of Payment" information, indicating the date which payment shall come due.

38. The Terms of Payment for PDS' overdue and Outstanding Invoices vary, but typically provide for a 30 day or 90 day period for payment.

39. On or around April 24, 2017, payments for the Overdue Invoices started to come due, and PDS failed to pay.

40. When SWA contacted Jim Petersen, the President of PDS, in regard to payment, on or around May 16, 2017, Petersen was unresponsive.

41. On May 17, 2017, Steve Doll, Chief Financial Officer of PDS, and George Milionis, General Counsel for PDS, agreed to a meeting with Shane Messer, SWA's Vice President of Sales and Marketing.

42. During this meeting, PDS refused to make any payments toward the Overdue Invoices and informed SWA that it will not make any payments toward the Outstanding Invoices when they come due.

43. PDS has never disputed the accuracy of the amount owed pursuant to the Overdue Invoices or Outstanding Invoices.

44. In conversations between SWA and PDS in regard to the Overdue and Outstanding Invoices, PDA never indicated that the amount owed was incorrect; rather, PDS outright refused to pay the amount owed despite its accuracy.

45. Section 4(b) of the General Conditions provides that "SWA may charge Customer interest on all late payments computed on a daily basis from due date until paid in full at the rate of one and one-half percent (1 ½%) per month or the maximum rate permitted by law, whichever is less. . . ."

46. Accordingly, for all PDS Overdue Invoices, interest is already accruing and will continue to accrue until paid.

47. Section 4(d) of the General Conditions states that the "[c]ustomer is responsible for and shall pay all costs, fees, and expenses, including reasonable attorney's fees and the fees

of collection agencies, incurred by SWA in enforcing any of the terms, conditions or provisions hereof or in protecting SWA rights herein or with respect to past due Customer accounts."

48. PDS has failed to pay Overdue Invoices and refuses to pay Outstanding Invoices, collectively in the amount of $8,247,184.89; therefore, PDS is responsible for all costs, fees, expenses, and attorneys' fees incurred by SWA in regard to these Invoices.

49. Pursuant to the written Guaranty Agreement between PD and SWA, PD is the Guarantor of PDS in favor of SWA such that PD guarantees PDS' payment and performance of all contractual obligations.

50. PDS has sent SWA an invoice in the amount of $26,090.00 for certain repairs allegedly covered by the SWA warranty (the "**Warranty Invoice**"). In satisfaction of any valid and proper warranty claim, SWA will agree to voluntarily reduce its demand such amount.

51. As PDS has failed to make payments due, refuses to make outstanding payments, and has stopped performing its contractual obligations, PD is also responsible for the amount of $8,247,184.89 (including interest as it accrues), less any valid and proper warranty claim amounts, in addition to all costs, fees, expenses, and attorneys' fees incurred by SWA in regard to recovering payment on these invoices.

COUNT I
(Breach of Contract - PDS)

52. SWA re-alleges and incorporates paragraphs 1 through 51 as if fully set forth herein.

53. SWA's sale and PDS' purchase of SWA's solar photovoltaic products and supplies are governed by the General Conditions and terms of the Invoices.

54. The General Conditions and terms of the Invoices require that SWA deliver specified products to PDS and that PDS pay for all products accepted when payment comes due.

55. SWA sold and delivered all products relating to the Overdue Invoices and Outstanding Invoices to PDS in accordance with both the General Conditions and the terms of the Invoices.

56. PDS has accepted all products sold pursuant to the Overdue Invoices and Outstanding Invoices, but has failed to remit payment for the Overdue Invoices.

57. SWA has requested payment for the Overdue Invoices, but PDS has refused to make any payments.

58. To date, PDS owes SWA $2,727,038.19 for the Overdue Invoices, which started to come due on April 24, 2017, less any valid and proper warranty claim amounts.

59. Pursuant to the General Conditions, SWA is also owed (1) interest at a rate of one and one-half percent per month (or the statutory maximum, whichever is less), computed daily, on all Overdue Invoices, and (2) all costs, fees, expenses, and attorneys' fees incurred by SWA in regard to recovering payment on the Overdue Invoices.

COUNT II
(Anticipatory Repudiation - PDS)

60. SWA re-alleges and incorporates paragraphs 1 through 59 as if fully set forth herein.

61. SWA has fully performed its obligations under the General Conditions and pursuant to the terms of the Invoices in regard to the Outstanding Invoices.

62. PDS has accepted all goods sold by SWA pursuant to the Outstanding Invoices, but has demonstrated a clear determination not to remit payment for the Outstanding Invoices when payment comes due.

63. PDS has been unresponsive to requests for payment, and during a meeting with SWA, PDS categorically refused to make any payments toward the Outstanding Invoices when they come due.

64. PDS owes SWA $5,520,146.70 for the Outstanding Invoices, which begin to come due on May 29, 2017, at which time interest at a rate of one and one-half percent per month (or the statutory maximum, whichever is less), computed daily, will begin to accrue on all Outstanding Invoices.

65. Pursuant to the General Provisions, SWA is also entitled to all costs, fees, expenses, and attorneys' fees incurred by SWA in regard to recovering payment on the Outstanding Invoices.

COUNT III
(Action on Account Stated - PDS)

66. SWA re-alleges and incorporates paragraphs 1 through 65 as if fully set forth herein.

67. In regard to all Overdue Invoices and Outstanding Invoices, PDS was entitled to a 24 hour period to review the Invoices and make any corrections or changes as necessary.

68. All Invoices contained "Terms of Payment" indicating the amount owed and the date on which the payment shall come due.

69. PDS failed to make any corrections or changes to any of the Overdue Invoices or Outstanding Invoices within 24 hours, or thereafter, and did not otherwise cancel, or attempt to cancel, any of these Invoices.

70. In fact, PDS has never disputed the accuracy of the amount owed pursuant to the Overdue Invoices or Outstanding Invoices.

71. In conversations between SWA and PDS in regard to the Overdue Invoices and Outstanding Invoices, PDS never indicated that the amount owed was incorrect; rather, PDS outright refused to pay the amount owed despite its accuracy.

72. PDS' stated account is currently in the amount of $8,247,184.89 for all Invoices, Overdue and Outstanding.

73. SWA is entitled to payment of the entire amount owed, less any valid and proper warranty claim, together with prejudgment interest at the statutory rate from the time the payments came due.

COUNT IV
(Breach of Guaranty - PD)

74. SWA re-alleges and incorporates paragraphs 1 through 73 as if fully set forth herein.

75. Pursuant to the written Guaranty Agreement between PD and SWA, PD is the Guarantor of PDS in favor of SWA such that PD guarantees PDS' payment for sales of SWA's photovoltaic products and supplies.

76. In the manner described above, PDS has failed to pay Overdue Invoices and refuses to pay Outstanding Invoices, collectively in the amount of $8,247,184.89, in direct violation of its contractual obligations, the General Provisions, and the terms of the Invoices governing the sales.

77. As PDS has failed to make payments due, refuses to make outstanding payments, and has stopped performing contractual obligations, PD is liable to SWA for the payment and performance of these obligations.

78. Therefore, pursuant to the Guaranty Agreement, PD is responsible for the entire amount owed by PDS, $8,247,184.89 (including interest as it accrues), less any valid and proper

warranty claim, as well as all costs, fees, expenses, and attorneys' fees incurred by SWA in regard to recovering payment on the Overdue Invoices and Outstanding Invoices.

COUNT V
(In the alternative to Counts I, II, and III - Unjust Enrichment – PDS)

79. SWA re-alleges and incorporates paragraphs 1 through 78 as if fully set forth herein.

80. At its request, PDS received goods from SWA with a market value of $8,247,184.89 and retained those goods for its own benefit.

81. PDS has failed to pay SWA for the value of the goods received.

82. SWA is entitled to restitution from PDS in the amount of $8,247,184.89, which is the amount of the benefit derived by PDS from its receipt of the goods.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SolarWorld Americas, Inc. prays for judgment as follows:

A. That the Court enter judgment on Count I in Plaintiff's favor and against Defendant PD Solar, Inc. in the amount of $2,727,038.19, plus interest at the rate of one and one-half percent (1 ½%) per month, less any valid and proper warranty claim amounts, plus attorneys' fees to be determined.

B. That the Court enter judgment on Count II in Plaintiff's favor and against Defendant PD Solar, Inc. in the amount of $5,520,146.70, plus interest at the rate of one and one-half percent (1 ½%) per month from the date the Outstanding Invoices are overdue, less any valid and proper warranty claim amounts, plus attorneys' fees to be determined.

C. That the Court enter judgment on Count III in Plaintiff's favor and against Defendant PD Solar, Inc. in the amount of $8,247,184.89, plus prejudgment interest at the statutory rate from the time the payments came due, less any valid and proper warranty claim amounts,.

D. That this Court enter judgment on Count IV in Plaintiff's favor and against Defendant Petersen-Dean, Inc. in the amount of $8,247,184.89, plus prejudgment interest at the statutory rate from the time the payments came due, less any valid and proper warranty claim amounts.

E. In the alternative to Counts I, II, and III, that this Court enter judgment on Count V in Plaintiff's favor and against Defendant PD Solar, Inc. in the amount of $8,247,184.89, plus prejudgment interest at the statutory rate from the time the benefit was received, less any valid and proper warranty claim amounts.

F. That Defendants be ordered to pay Plaintiff post-judgment interest on all sums awarded.

G. That Defendant PD Solar, Inc. be ordered to pay Plaintiff's reasonable attorneys' fees pursuant to the agreement of the parties.

H. That Plaintiff be awarded such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL CLAIMS.

DATED: June 8, 2017.

STOEL RIVES LLP

/s/ Stephen H. Galloway

STEPHEN H. GALLOWAY, OSB No. 093602
stephen.galloway@stoel.com
Telephone: 503.224.3380
Attorneys for Plaintiff